

### DEBTOR-IN-POSSESSION INFORMATION SHEET

Generally, the goal of a Chapter 11 reorganization case is to restructure finances so that the debtor may continue to operate, provide its employees with jobs, pay its creditors, and produce a return for its stockholders, if any. To effectuate this goal, the general policy of the Chapter is to provide the debtor with a breathing spell from debt collection efforts in order for it to work out a repayment plan with its creditors. However, the goals of the bankruptcy laws cannot be met in an "anything goes" approach. Hence, certain guidelines must be observed and standards must be met. These guidelines and standards are delineated in the paragraphs which follow.

To assist in the effective administration of the bankruptcy estate, certain rights, obligations and duties are imposed upon the debtor by the Bankruptcy Code. Section 1108 of the Code authorizes a debtor to operate its business and manage its property during the pendency of the proceeding, while § 1107 sets forth the rights, duties and powers of the debtor-in-possession. In essence, the debtor steps into the shoes of a trustee in bankruptcy and is expected to perform all the functions and duties of the trustee except the duty to investigate the conduct of the debtor.

Under this section, the debtor is required to:

1. Account for all property received;
2. Examine proofs of claims and make appropriate objections thereto;
3. Furnish information regarding the estate and its administration upon request by the court or a party in interest;
4. File with the Court and the U.S. Trustee all periodic reports and summaries which are to be made;
5. As soon as practicable, file a plan of reorganization or recommend conversion to Chapter 7 or 13 or dismissal of the case;
6. File necessary reports after confirmation of a plan; and
7. Make a final report and file a final account of the administration of the estate with the Court and with the U.S. Trustee.

In addition, to the foregoing, the debtor has other more specific duties and requirements with which it must comply.

#### **BANK ACCOUNTS AND FINANCIAL STATEMENTS**

Immediately upon filing of the petition, the debtor must close all of its bank accounts and open new ones. These new accounts shall consist of at least general and tax accounts. The new bank signature cards and checks shall clearly indicate the debtor is a "Chapter 11 Debtor-in-Possession."

#### **OBTAINING CREDIT**

Along with a debtor's desire to use, sell or lease property, the debtor may want to incur a debt. The Code allows the debtor to obtain unsecured credit and incur unsecured debt in the ordinary course of business. The debts so incurred are allowable as administrative expenses under § 503(b)(1) of the Code. Note, however, that the Court may limit the debtor's power to establish such debts.

If the debtor desires to obtain unsecured credit or debt for reasons outside of the ordinary course of business, it must make an application to the Court. After notice and a hearing, the Court may authorize the debtor to incur such obligations. Again, these obligations are treated as an administrative expense of the estate.

A debtor is required to pay all necessary and current expenses stemming from the operation of the business or imposed upon the debtor's property insofar as such payments are necessary in connection with the preservation of the assets and the operation of the business. However, this authority is limited in that payments are only to be made in satisfaction of obligations incurred by the debtor since the filing of the petition.

#### **EXECUTORY CONTRACTS AND LEASES**

A debtor's executory contracts might be beneficial to the estate, or might be burdensome to the estate. Hence, subject to approval by the Court, the Code provides for both assumption and rejection by executory contracts and unexpired leases of the

debtor, by the debtor as the representative of the estate. However, it is noted that a rejection constitutes a "breach", giving rise to an appropriate claim for damages.

Also, if the debtor does not assume or reject an unexpired lease of nonresidential property under which the debtor is the lessee within 60 days after the date the petition is filed, or within such additional time as the Court fixes, the lease is deemed rejected and the debtor must immediately surrender the property to the lessor.

#### PAYMENTS TO PRINCIPALS OF DEBTOR AND PROFESSIONAL PERSONS

The power of the debtor to operate its business and to manage its property includes, but is not limited to, the ability to employ, discharge, and fix the salaries and compensations of all managers, agents, and employees. It is emphasized that this power does not include the authority to fix the salaries and compensation of the debtor, attorney for the debtor, or the officers, directors and stockholders. The compensation of these individuals must be ordered by the Court acting upon the application of a party in interest. The attorney for the debtor must make a motion asking the Court to set the level of compensation for the above individuals.

#### USE OF CASH COLLATERAL

Section 363 states that the debtor may also enter into transactions, including the sale or lease of property of the estate, and may use property of the estate in the ordinary course of business without notice of hearing unless the Court orders otherwise. However, a debtor's ability to use, sell or lease property in the ordinary course of business without notice or hearing is subject to an exception in the case of "cash collateral". Cash collateral, as defined in § 363(a), means "cash, negotiable instruments, documents of title, securities, deposit accounts, secured accounts receivable, or other cash equivalents in which the estate and an entity other than the estate have an

interest and includes the proceeds, products, offspring, rents or profits of property subject to a security interest as provided in § 552(b) of this title, whether existing before or after the commencement of a case under this title".

#### THE MONTHLY OPERATING REPORT

One of the most important functions of a debtor-in-possession is to keep its creditors, the U.S. Trustee and the Court informed of the status of the business undergoing reorganization. Thus, this Court requires that all debtors-in-possession file monthly operating reports.

In addition to questions concerning the status of the debtor's-in-possession current operations, the report contains a requirement that a monthly cash flow statement and a statement of profit and loss, on an accrual basis, be attached to the report.

The reports are due on the 15th of each month for the preceding calendar month. They must be completed on the approved form.

#### COMPLIANCE WITH COURT ORDERS, RULES AND PROGRESS TOWARD CONFIRMATION OF PLAN

The Court, and the United States Trustee, monitors all Chapter 11 cases on a regular basis. Should it become apparent that the rules and orders of the Court are not being complied with, or that no progress is being made toward the filing and confirmation of a plan, an Order may be issued for you to appear and explain why the case should not be dismissed, converted to a liquidation proceeding under Chapter 7 or made subject to other relief which the Court deems appropriate.

Finally, it cannot be overemphasized that the debtor-in-possession, as a representative and fiduciary of the estate, must avoid any exercise or appearance of wrongdoing, or of self-dealing with the benefit of insiders. And, in order to control any abuse of the bankruptcy system, the Court is required to refer any case which appears to violate the bankruptcy laws to the appropriate law enforcement agency.